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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

BEVERLY SIMS,

Defendant and Appellant.

E050881

(Super.Ct.No. FVI1000468)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata,  
Judge. Affirmed.

John D. O'Loughlin, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

# I

## INTRODUCTION

On February 18, 2010, a felony complaint charged defendant and appellant Beverly Sims with assault with a deadly weapon under Penal Code<sup>1</sup> section 245, subdivision (a)(1). The complaint also alleged that the assault was a serious felony within the meaning of section 1192.7, subdivision (c).

On April 2, 2010, defendant pleaded guilty to the charge. In exchange for her guilty plea, she was placed on probation with 29 conditions. Defendant objected to the imposition of terms regarding alcohol because her offense did not involve alcohol. Moreover, defendant objected to the following probation conditions as being overbroad: (1) submit to field interrogation by any peace officer; (2) carry a copy of the probation conditions at all times; (3) cooperate with psychiatrists or medical doctors and take prescribed medication; and (4) meet and keep all appointments with mental health care case manager.

Defendant filed a timely notice of appeal.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

## II

### STATEMENT OF FACTS<sup>2</sup>

On February 14, 2010, San Bernardino County Deputy Sheriff Josh Conley responded to a call regarding a disturbance at a house in Apple Valley. Deputy Conley was flagged down by the victim Robert Masterson who had blood on his upper lip and on the left side of his face. Masterson told the deputy that he had been in a fight with defendant's boyfriend, Melvin Carter. After the fight ended and they had cooled off, defendant approached Masterson with a knife. Deputy Conley found the bloody knife in defendant's kitchen.

Deputy Conley found defendant across the street and interviewed her. Defendant admitted swinging the knife at Masterson but denied making contact. Defendant identified the knife the deputy had retrieved as the one she swung at Masterson. The deputy smelled alcohol on defendant's person, but not on Masterson's. A witness named Bachelor stated that she saw defendant swing the knife at Masterson, but did not see her contact Masterson with the knife. Masterson was treated at the scene by paramedics.

A police report provided the above information in greater detail. In the report, it was noted that after smelling alcohol on defendant's person, the deputy asked defendant if she had been drinking. Defendant responded that she had three 12-ounce cans of beer.

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<sup>2</sup> The parties stipulated that the factual basis for the plea was based on the evidence adduced at the preliminary hearing.

Defendant had a previous felony conviction for possession of a controlled substance in violation of Health and Safety Code section 11350, subdivision (a), in 1989; a misdemeanor conviction of petty theft under Penal Code section 484, subdivision (a); and a conviction for being under the influence of a controlled substance under Health and Safety Code section 11550, subdivision (a).

According to defendant, she has suffered from manic depression and bipolar personality disorder, and she sometimes heard voices. She took multiple medications for her medical conditions. She drank alcohol, but not to excess. The last time she was drunk was a year prior to the incident. Defendant stated that she did not use marijuana very often.

At the probation and sentencing hearing, defendant told the court that she did not use drugs and that she did not drink “out of control.”

### III

#### ANALYSIS

After defendant appealed, and upon her request, this court appointed counsel to represent her. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but she has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

#### IV

#### DISPOSITION

The judgment is affirmed.

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/s/ McKinster  
J.

We concur:

/s/ Hollenhorst  
Acting P.J.  
/s/ Richli  
J.